IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION.

CRIMINAL APPLICATION NO.90 OF 2006

IN

CRIMINAL APPEAL NO.79 OF 2006

Altaf Mirasaheb Shaikh : Applicant.

versus

State of Maharashtra : Respondent.

Mr.Sajiv Kadam i/by P.D.Dalvi for the applicant.
Mrs.A.S.Pai, APP, for the State.

CORAM : D.G.DESHPANDE

V.K.TAHILRAMANI JJ.

DATED : MAY 4TH, 2006.

ORAL ORDER

1. This is an application for bail by the accused who has been convicted by the trial Court under Section 302 of the Indian Penal Code and sentenced to imprisonment for life and fine. Victim in this case is one Raju Arjun Lamkane who

was killed in the field bearing Gat No.482 by assaulting him with knife on the head, face, stomach and back. Few days before this murder, the accused had taken a minor girl to Ichalkaranji on his bicycle. She was left there. The matter was discussed in the village by complainant and a complaint was lodged with the police. Chapter case came to be filed against the accused. Accused got annoyed by the action taken by deceased and, therefore, when the deceased had gone to bring signature of the surety on loan form and also to bring medicines, he was killed by the accused. The incident of murder is alleged to have taken placed after 8.30 p.m. on that day and offence came to be registered at 12.10 a.m. The evidence against the accused is of extra judicial confession. The accused came to be arrested at Ichalkaranji when he was found moving in suspicious position with blood stains on his clothes. The police who were on patrolling duty got suspicious about him. He was taken in custody. But prior to that when questioned, the accused gave confessional statement to the police that he has committed murder.

2. Thereafter he was handed over to PSI who was investigating the matter. The evidence against the accused is motive, recovery of blood stained clothes from him and recovery of weapon at his instance.

3. The counsel for the accused, however, contended that the incident of taking away the girl was a minor incident. No case of kidnapping was registered against the accused. In this regard we had directed learned APP to take instruction. She, upon instruction, submitted that only chapter case is pending against the accused and no case of kidnapping was registered. Therefore, according to her, if only chapter case is registered against the accused, there was no reason for the accused to kill him. So far as recovery of weapon is concerned, the knife was recovered at the instance of the accused. There were blood stained clothes on the person of accused. In Addition, there is extra judicial confession by the accused to the police officers who were on patrolling duty at Ichalkaranji and who found the accused moving in suspicious

circumstances with blood stained clothes on his person. Though it is true that this is a case based on circumstantial evidence and, even if for the time being extra judicial confession to the police, as stated above, is not taken into consideration, recovery of blood stained clothes and recovery of knife immediately after the arrest coupled with the fact that motive even in the absence of case of kidnapping being registered against the accused are strong circumstances going against the accused. If he has taken that girl on his bicycle without permission of her parents and left her at Ichalkaranji, that was rightly treated as serious thing. It is not known that why police did not register any case of kidnapping against the accused but the fact of registering chapter case and the subsequent evidence about frequent visits and threats by the accused to the victim followed by murder disentitling bail.

4. The blood group of deceased was "A". The blood stains found on clothes of the accused were of group "A" and, there is positive evidence of doctor that the accused had no injury on his person when he was arrested. Therefore, there is

no explanation from the accused how the blood of group "A" of deceased came on his clothes.

5. So far as the knife Article 55 recovered at the instance of accused is concerned, as per the report of C.A. it had blood stains of blood group "A" which was that of the deceased. Recovery of knife at the instance of the accused with the blood of deceased is also a strong circumstance going against the accused. These are sufficient reasons to reject the bail application of the accused. Therefore, Criminal Application No.90 of 2006 is rejected.

[D.G.DESHPANDE,J]

[V.K.TAHILRAMANI,J]